police regulation designed to secure the well-being and to promote the general welfare of the people within the State by which it was established, and, therefore, not invalid by force alone of the Constitution of the United States.

The judgment is affirmed. *Affirmed.*

BY THE EDITOR.—The foregoing opinion was noticed in the last number (July) of the REGISTER, pp. 224, 225, but its importance justifies its publication in full, in advance of the official report. We see it stated in one of our recent exchanges, that the Chief Justice and Mr. Justice White dissented, and we infer from the statement that a dissenting opinion was filed. We regret that we have not been able to get this in time to publish it with the opinion of the majority. The opinion of the court should be read in connection with the recent opinion of the Virginia Court of Appeals on the same subject in *N. & W. R. Co. v. Commonwealth*, which follows in this number of the REGISTER, at p. 273. Happily, the opinions of the two courts seem to be in accord.

After the foregoing had gone to press we received the following dissenting opinion of the Chief Justice, in which Mr. Justice White concurred:

Intercourse and trade between the States by means of railroads passing through several States, is a matter national in its character, and admitting of uniform regulation. The power of Congress to regulate it is exclusive, and under the Constitution it is free and untrammeled except as Congress otherwise provides. This statute, in requiring the suspension of interstate commerce for one day in the week, amounts to a regulation of that commerce, and is invalid, because the power of Congress in that regard is exclusive. But it is said that the Act is not a regulation of commerce, but a mere regulation of police, and that the so-called police power of a State is plenary. The result, however, is the same. When a power of a State and a power of the general government come into collision, the former must give way; and, as the freedom of interstate commerce is secured by the Constitution, except as Congress shall limit it, the Act is void, because in violation of that freedom.

SUPREME COURT OF APPEALS OF VIRGINIA.

RICHMOND.

MAGARITY v. SHIPMAN.*

April 9, 1896.

STATUTE OF LIMITATIONS—*New promise—Account stated.* An account stated, which is not supported by a writing signed by the debtor or his agent, will not prevent the running of the statute of limitations against previously existing items of indebtedness included therein.

Appeal from the Circuit Court of Fairfax county. *Affirmed.*

John Critcher, for appellant.

R. W. Moore, for appellee.

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*Reported by M. P. Burks, State Reporter.

BUCHANAN, J., delivered the opinion of the court.

The only question in this case which it is necessary to decide is, whether the account sued on is barred by the statute of limitations.

The record discloses the fact that there had been a statement of accounts between the parties in December, 1891, and a balance of $504.20 ascertained to be due the appellant, as of that date. There is no doubt, as contended by appellant's counsel, that an "account stated" is an acknowledgment of the then condition of liability between the parties, from which the law implies a promise to pay the balance thus ascertained and acknowledged to be due, and that it thereby becomes a new and independent cause of action, to the extent that a recovery may be had upon it without setting out or proving the separate items of liability from which the balance results. But is it such an acknowledgment as will stop the statute of limitations from continuing to run upon the original items of account, under sec. 2922 of the Code, which provides that if any person against whom a right of action to recover money, which is founded upon an award or any contract other than a judgment or recognizance, shall have accrued, "shall, by writing signed by him or his agent, promise payment of money on such award or contract, the person to whom the right shall have so accrued may maintain an action for the money so promised within such number of years after such promise as it might be maintained under sec. 2920, if such promise were the original cause of action. . . . . An acknowledgment in writing, as aforesaid, from which a promise of payment may be implied, shall be deemed to be such a promise within the meaning of this section."

We are satisfied that it was intended, by the statute quoted, and that it should be so construed, that no statement of account can have the effect of stopping the running of the statute of limitations upon the items of account which are included in the account stated, and which would otherwise be barred, unless there be a writing, signed by the party to be charged, or his agent, expressly promising to pay the balance thus ascertained to be due, or in which there is such an acknowledgment of the liability that a promise of payment may be inferred therefrom. If a verbal agreement, express or implied, be relied on, it can only avail when it is made upon such consideration and under such circumstances as to amount to a new contract.

It is true that it has been held in England, under the statute of 9 Geo. IV., that a statement of mutual accounts was sufficient to take a

case out of the statute of limitations; but the English statute differs from ours in this, that by it part payment was a sufficient acknowledgment of the debt to deprive the debtor of the benefit of the statute, and the courts treated the deduction of the debtor's account from the creditors in their statement of mutual accounts, and the striking of a balance, as converting the debtor's account, which was theretofore a set-off, into a payment on the debt sued on, thus bringing an account stated within the provisions of the statute. But as our statute contains no such provisions, those cases and their reasoning are of no aid in construing it. Revisors' Report of Code of 1849, p. 743, 744; 1 Rob. Prac. (New) 544, 545.

But in those States whose statutes are similar to ours, and which contain no such provision as to part payment as is contained in the English statute referred to, the courts hold that a stated account does not affect the running of the statute.

In the case of *Chace v. Trafford*, 116 Mass. 529, under a statute similar to ours, it was held that an account stated which is not supported by evidence of some writing signed by the party to be charged will not prevent the running of the statute of limitations against the previously existing liabilities included therein.

To the same effect was the decision of the Supreme Court of Michigan in the case of *Sperry v. Moore's Estate*, 42 Mich. 353. See, also, 1 Rob. Prac. (New) 544, 545; 2 Wood. Lim., sec. 280, and Ang. Lim., sec. 275.

At the time the account was stated which is sued on, every item in the original account of the appellant was barred by the statute of limitations except one, and all were barred when the suit was brought.

The Circuit Court, we think, properly sustained the defence of the statute of limitations, and dismissed the bill, and its decree must be affirmed. *Affirmed.*

BY ASSOCIATE EDITOR.—This case overrules a contrary doctrine laid down in *Radford v. Fowlkes*, 85 Va. 820, where it was held that an account stated operated to remove or to extend the bar of the statute of limitations, even in the absence of a writing. Such a ruling was scarcely necessary, however, in *Radford v. Fowlkes*, as the decision depended upon the peculiar facts of the case, and might have been rested on the doctrine of estoppel and the effect of an *ex parte* settlement by the fiduciary before the commissioner of accounts, both of which grounds are discussed and apparently adopted by the court in reaching its conclusion. It seems to us that the ruling in the principal case is perfectly sound under the Virginia statute expressly requiring a new promise in writing to repel the bar of the statute.

W. M. L.